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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,692	02/10/2004	Walter Howard	77070	7393

7590 07/26/2005

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/774,692

Applicant(s)

HOWARD ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Applicant's election with traverse of Group II, claims 11-33 in the reply filed on 5/19/05 is acknowledged. The traversal is on the ground(s) that compressing by hand is disclosed on page 6 lines 15-16. This is not found persuasive because the restriction is based on the claims, not on the disclosure. Furthermore, manual operation does not necessarily mean by hand; it could be a device operated by hand.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 11-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmura et al.

Ohmura et al. disclose a process of decreasing the bulk of food product. The process comprises the step of subjecting the food product which has been heat treated to a treatment for decreasing its bulk. The food product includes bread slices. The heat treatment includes roasting. The food product is characterized in that its bulk is

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restored. The treatment of decreasing its bulk includes pressure compression with the use of a press. The food product after compressing is subjected to freezing, packaging and sealing. The food product can contain filling materials. The edible filling material may be introduced into the food having a decreased bulk after the treatment for decreasing the bulk, such as compression. (see col. 4 lines 8-31, 55-60, col. 6 lines 27-30, 45-50, col. 8 lines 6-16, 29-34, col. 9 lines 30-37, col. 19 lines 50-54)

Ohmura et al do not disclose toasting, cracking the crust portion, the means of compressing as claimed, grilling at the temperature and time claimed, the reduced thickness as claimed, applying edible oil and toasting using an impingement oven.

Ohmura et al teach heat-treating the bread. Thus, it would have been obvious to one skilled in the art to toast the bread because it is a well known technique for heating bread. It would have been obvious to use any known equipment; impingement oven is well known in the art. Ohmura et al disclose roasting which would include grilling. It would have been obvious to one skilled in the art to determine the temperature and time depending on the degree of brownness desired and the size of the product. Since the Ohmura et al food is subjected to compression, it is obvious cracking will result because the same step is performed. It would have been obvious to one skilled in the art to use any known device to do the compression; the devices claimed are well known. It would have been obvious to have varying degree of compression to obtain varying degree of reduced thickness depending on the decrease in bulk wanted; this can readily be determined by one skilled in the art. It would also have been obvious to apply an oil to the surface of the bread to enhance the taste of the product because fat

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serves to improve the texture and also fat is known to serve as moisture barrier which improves the storage stability.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jones discloses a process for producing compressed frozen slices of bread.

Kershman et al disclose a toaster reheatable sandwich product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 23, 2005


LIEN TRAN
PRIMARY EXAMINER
Group 1700